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Kan Pacific Saipan, Ltd.
dba Mariana Resort and Spa

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN MARIANA ISLANDS

KOICHI TANIGUCHI,)	CIVIL CASE NO. 08-00008
)	
Plaintiff,)	MEMORANDUM OF POINTS AND
)	AUTHORITIES IN SUPPORT OF MOTION
vs.)	TO COMPEL
)	
KAN PACIFIC SAIPAN, LTD. dba)	
Mariana Resort and Spa,)	
)	
Defendant.)	
)	

I. INTRODUCTION

Defendant Kan Pacific Saipan, Ltd. (“Kan Pacific”) moves pursuant to FRCP 37(a)(1) for an order compelling plaintiff Koichi Taniguchi (“Taniguchi”) to respond to requests for production.

II. FACTS

The facts set forth below are based upon the accompanying Declaration of Tim Roberts and the exhibits to that declaration.

On April 22, 2008, Kan Pacific served Interrogatories and a Request for Production to Taniguchi. Declaration of Tim Roberts ("Roberts Dec."), Exhibits A and B. Taniguchi has yet to respond to the Request for Production. On May 27, 2008, Kan Pacific noticed Taniguchi's deposition for June 27, 2008. Roberts Dec., Exhibit C. Kan Pacific had to cancel the deposition because it could not prepare for the deposition without the overdue discovery responses. Roberts Dec., Exhibit D; paragraph 6.

Counsel for the parties met and conferred telephonically on June 11, 2008. The emails attached as Exhibit E to the accompanying Declaration of Tim Roberts are self explanatory copies of all relevant emails exchanged between counsel related to the outstanding discovery.

Unless Kan Pacific receives Taniguchi's discovery responses in the very near future, Kan Pacific will be severely prejudiced in its efforts to prepare its defense in time for trial in accordance with the Case Management Scheduling Order filed on April 9, 2008.

On Tuesday, July 1, 2008, Defendant received what purport to be Plaintiff's answers to the Interrogatories. However, the answers are not signed by Plaintiff and they are not made under oath as required by FRCP 33(b)(1) and (2). Even if they had been signed by Plaintiff under oath, they are vague and non-responsive, and have not been answered "fully" within the meaning of FRCP 33(b)(1). These interrogatory answers may become the subject of a separate motion to compel, in the event counsel are unable to reach an agreement.

III. LEGAL ARGUMENT

The Rules of Civil Procedure pertaining to discovery are clear in situations such as those giving rise to this motion.

Rule 34(a)(1) of the Federal Rules of Civil Procedure provides that a party may serve a request for production of documents on another party. The party receiving the request must respond within 30 days. FRCP 34(b).

Rule 37(a)(2) of the Federal Rules of Civil Procedure provides that if a party fails to respond to discovery submitted pursuant to Rules 33 and 34, the party seeking discovery may move for an order compelling responses. Rule 37(a)(4)(A) provides that if the motion is granted, the court shall, after affording an opportunity to be heard, require the party whose conduct necessitated the motion to pay the moving party's reasonable expenses incurred in making the motion, including attorney's fees.

Defendant Kan Pacific has served a request for production on plaintiff Taniguchi. No responses or objections were received in a timely fashion. Defendant Kan Pacific is therefore entitled to an order compelling discovery responses and awarding reasonable expenses including attorney's fees.

IV. CONCLUSION

For the foregoing reasons, Kan Pacific's motion to compel should be granted and Kan Pacific should be awarded its reasonable expenses, including attorney's fees.

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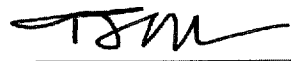
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Respectfully submitted,

DOOLEY ROBERTS & FOWLER LLP

Date: 7/02/08

By: 
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